

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 16 2009
CLERK, U.S. DISTRICT COURT
By _____ Deputy

RICARDO GUTIERREZ,

Petitioner,

v.

2:05-CV-0271

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.¹

**ORDER OVERRULING OBJECTIONS,
ADOPTING REPORT AND RECOMMENDATION
and DENYING PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner has filed with this Court an application for a writ of habeas corpus by a person in state custody. On January 6, 2009, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that habeas relief be denied. Petitioner filed objections to the Report and Recommendation on February 25, 2009.

The undersigned United States District Judge has made an independent examination of the record in this case and has considered the objections made by petitioner to the Report and Recommendation. Petitioner's first objection is that the Report and Recommendation failed to consider the fact that petitioner's three prior convictions for theft were used against petitioner at trial and before the jury. After reviewing the record, the undersigned has determined such evidence was in fact used in petitioner's trial when the jury was present. Petitioner's objection regarding these misdemeanor theft convictions is without merit because the evidence was properly used for impeachment purposes against the petitioner when he testified, a permissible use of prior theft

¹ The previously named respondent was Douglas Dretke, who was succeeded by Nathaniel Quarterman on June 1, 2006, as Director of the Texas Department of Criminal Justice, Institutional Division. Under Rule 25(d)(1) of the Federal Rules of Civil Procedure, Quarterman is automatically substituted as a party.

convictions. (See Reporter's Record Vol. 3, pgs. 111-12). Further, petitioner himself placed these convictions before the jury when he testified on direct. (*Id.* pg. 108). All other objections filed by petitioner are without merit. Accordingly, all of petitioner's objections are hereby OVERRULED. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. The petition for a writ of habeas corpus filed by petitioner is DENIED.

IT IS SO ORDERED.

ENTERED this 16th day of March 2009.


MARY LOU ROBINSON